

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JUAN RIQUIAC MEJIA,

Plaintiff,

– against –

KE LAI XIANG NUMBER ONE
RESTAURANT INC., LIN LIU, and LI PING
CHEN,

Defendants.
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: **ORDER ADOPTING REPORT
AND RECOMMENDATION**

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: 21-CV-6664 (AMD) (CLP)

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ANN M. DONNELLY, United States District Judge:

On December 1, 2021, the plaintiff brought this case against Ke Lai Xiang Number One Restaurant, Inc. and Lin Liu (the “original defendants”), his former employers, alleging violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, New York Labor Law §§ 190, 650 *et seq.*, and related regulations, 12 N.Y.C.R.R. §§ 142-2.1 to 142-2.2. (ECF No. 1.) On July 31, 2023, the plaintiff filed an amended complaint, which brought the same claims alleged in the original complaint but added Li Ping Chen as a defendant. (ECF No. 27.) The plaintiff alleges that Chen was his joint employer, along with the original defendants. (*Id.* ¶¶ 7–14, 18–19, 29–31.)

The original defendants filed an answer to the amended complaint on September 22, 2023. (ECF No. 30.) The plaintiff served Chen with a summons and the amended complaint on September 25, 2023, making her answer due on October 16, 2023. (ECF No. 31.) Chen did not file an answer or otherwise respond to the amended complaint, and has not appeared in this action.

On December 7, 2023, Magistrate Judge Cheryl Pollak certified that the plaintiff and the original defendants had completed discovery. (*ECF Order dated Dec. 7, 2023.*) On December 11, 2023, the plaintiff requested a certificate of default against Chen (ECF No. 35); the Clerk of Court entered the default on December 15, 2023 (ECF No. 36). On February 14, 2024, the plaintiff moved for default judgment against Chen (ECF No. 39), and the Court referred the motion to Judge Pollak (*ECF Order dated Feb. 14, 2024*).

The plaintiff and the original defendants participated in a bench trial on July 9, 2024. (*See Minute Entry dated July 9, 2024.*) The parties' amended proposed findings of fact and conclusions of law are due by August 30, 2024. (*Id.*)

On July 29, 2024, Judge Pollak issued a Report and Recommendation in which she recommended that the Court deny the plaintiff's motion for default judgment without prejudice and with leave to renew once the Court resolves the plaintiff's claims against the original defendants. (ECF No. 51 at 2.) No objections have been filed to the Report and Recommendation, and the time for doing so has passed.

The Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). To accept those portions of the Report and Recommendation to which no timely objection has been made, "a district court need only satisfy itself that there is no clear error on the face of the record." *Jarvis v. N. Am. Globex Fund L.P.*, 823 F. Supp. 2d 161, 163 (E.D.N.Y. 2011) (quoting *Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003)).

I have carefully reviewed Judge Pollak's well-reasoned Report and Recommendation and find no error. Accordingly, I adopt the Report and Recommendation in its entirety and order that

the plaintiff's motion for default judgment is denied without prejudice and with leave to renew once the plaintiff's claims against the original defendants have been resolved.

SO ORDERED.

s/Ann M. Donnelly

ANN M. DONNELLY
United States District Judge

Dated: Brooklyn, New York
August 13, 2024